



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cajar Defense Support Company--
Reconsideration

File: B-240477.2

Date: September 14, 1990

Mason Ford for the protester.

Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where protest of agency's refusal to extend date for receipt of proposals and defective solicitation failed to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations, and reconsideration request does not specify any error of fact or law that would warrant reversal or modification.

2. General Accounting Office's authority to decide bid protests is limited by statute to protests of a particular solicitation or award and does not extend to general protests of agency contracting practices.

DECISION

Cajar Defense Support Company requests reconsideration of our decision, Cajar Defense Support Co., B-240477, Aug. 3, 1990, 90-2 CPD ¶ ___, in which we dismissed its protest of request for proposals (RFP) No. DAAA21-90-R-0098, issued by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM), for failure to set forth a detailed statement of the legal and factual grounds of the protest as required by our Bid Protest Regulations, 4 C.F.R. §§ 21.1(b)(4) and 21.3(m) (1990). We also dismissed Cajar's general protest against AMCCOM contracting practices as outside the scope of our bid protest function.

We deny the request for reconsideration.

In its protest, Cajar objected to the agency's refusal to extend the amount of time allowed in the RFP for preparation

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of proposals--35 days--citing "other concerns and activities with the AMCCOM procurement process, as well as a need to define whether we can provide a valid proposal." Cajar also alleged that it was impossible "to determine any reasonable approach to a proposal as to an acceptable evaluation or to even roughly estimate a cost range unless one has inside information."

In our decision dismissing the protest, we pointed out that our Regulations contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. In this regard, where a protester contends that the agency allowed insufficient time for preparation of proposals, we require a showing that the time allowed was inconsistent with statutory requirements or otherwise unreasonable or insufficient, or that it precluded full and open competition. See Massa Prods. Corp., B-236892, Jan. 9, 1990, 90-1 CPD ¶ 38; Control Data Corp., B-235737, Oct. 4, 1989, 89-2 CPD ¶ 304. As Cajar's general expression of dissatisfaction with the RFP and the time allowed for preparation of proposals did not meet our standard for specificity, we dismissed this protest ground. Cajar's protest also complained at length about AMCCOM's past procurement actions and its contracting process in general, and the fact, allegedly, that Cajar is on a "black list." In dismissing this protest ground, we noted that broad issues such as these are outside the scope of our bid protest function.

Cajar argues that, in finding that the protest failed to set forth a detailed statement of the protest grounds, we improperly allocated the "full burden of proof" to the protester.^{1/} Cajar apparently misunderstands our requirement that a protester set forth a detailed statement of the legal and factual bases for its protest. We do not require that the protester prove in its initial protest submission that the agency acted improperly; this we determine based

^{1/} In support of this argument, Cajar points to an alleged error in our recital of the events that led to the protest, where we stated that the agency denied both Cajar's verbal and written requests for an extension of time, alleging that we substituted an agency version of the events for the "correct" version. While Cajar alleges that the agency never responded to its written request, the record contains a copy of a July 19 letter from the agency denying Cajar's July 12 request.

upon our review of the entire developed record. See MIDDCO, Inc.--Recon., B-235587.2, Oct. 31, 1989, 89-2 CPD ¶ 402. As we have noted, however, in order for a protest to warrant initial consideration by our Office so that we will develop the record by seeking an administrative report from the agency, the protest must contain allegations or evidence that, if uncontradicted, establish the likely success of the protester's claim. Professional Medical Prods., Inc., B-231743, supra. If a protest does not meet this threshold standard, our Regulations provide for its dismissal. 4 C.F.R. § 21.3(m).

Here, Cajar did not offer any specific reason why 35 days was insufficient time to prepare its proposal, and thus failed to establish any likelihood that the agency's refusal to extend the time was improper. We therefore properly dismissed the protest. Cajar's argument on reconsideration that we did not consider the "uniqueness" of the RFP requirements is without merit since Cajar offered no specific allegations concerning them; Cajar's assertion that it is "impractical" for it to provide specific details regarding weaknesses in the RFP does not excuse its failure to do so.

Cajar also asserts that we ignored certain of its allegations, including the one that it has been "black listed" by AMCCOM. This allegation was among those concerning AMCCOM's contracting procedures in general, which were dismissed as outside the scope of our bid protest function. We note, however, that before we would consider this issue in the context of a particular procurement, we would require more than a bald assertion that a "black list" exists; in order to show possible bad faith, a protester must present specific facts that reasonably indicate that the government actions complained of were motivated by a specific and malicious intent to injure the protester. See Vanguard Indus., Inc., B-233490.2, Dec. 21, 1988, 88-2 CPD ¶ 615. Cajar did not do so here.

With regard to our holding that Cajar's general protest of AMCCOM procurement practices is outside the scope of our bid protest function, Cajar complains that its protest was directed to the Comptroller General, not to the "bid protest function," and requests a decision by the

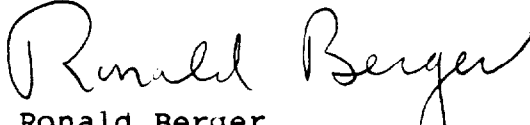
Comptroller General on the merits of "the entire general protest issues we have been raising for several years."2/

The authority of our Office to decide bid protests is now found in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (1988). This statute provides that the Comptroller General shall decide a protest concerning an alleged violation of a procurement statute or regulation if the protest is filed in accordance with the bid protest provisions of CICA. These provisions define a "protest" as "a written objection . . . to a solicitation by a Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract." 31 U.S.C. § 3551. Cajar's general objections to AMCCOM's procurement practices do not pertain to a particular solicitation or to the award or proposed award of a particular contract. Therefore, we properly dismissed these issues as outside the scope of the Comptroller General's bid protest function. As to Cajar's request for a decision by the Comptroller General instead of the "bid protest function," Cajar attempts to draw a distinction where there is none; our "bid protest function" refers to the Comptroller General's authority under CICA to decide bid protests, and our decision dismissing Cajar's protest was signed by the Comptroller General's designee for that purpose under CICA. 31 U.S.C. § 3554(d).

To obtain reconsideration, a protester must show that our decision may have contained factual or legal error or that

2/ To the extent that Cajar is claiming that our Office has previously considered its general protest issues but now refuses to do so, a review of our prior decisions in protests filed by Cajar and by its predecessor, Armament Engineering Company, indicates that most of Cajar's previous protests related to specific alleged violations with regard to particular procurements. See, e.g., Cajar Defense Support Co., B-237522, Feb. 23, 1990, 90-1 CPD ¶ 213; Armament Eng'g Co., B-228445, B-228582, Feb. 8, 1988, 88-1 CPD ¶ 455. More recently, however, Cajar has begun to protest "the entire professional services contracting program at Picatinny Arsenal," and we have dismissed these protests as outside the scope of our bid protest function. Cajar Defense Support Co.--Recon., B-237522.2, July 3, 1990, 90-2 CPD ¶ ____; Cajar Defense Support Co.--Recon., B-238621.2, B-238622.2, May 18, 1990, 90-1 CPD ¶ 488; Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286.

information which would warrant reversal or modification was not previously considered. 4 C.F.R. § 21.12; R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Cajar has not met this standard. Therefore, the request for reconsideration is denied.


Ronald Berger
Associate General Counsel